was entitled to recover from county by the value of the land wrongfully taken in excess of amount already received by her, and to recover for any damages either to the crops or to the residue of the land which were directly consequential upon such wrongfully taking, including damages arising from washing the land subsequent to condemnation of the land not used.

[Ed Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 114.]

8. Eminent Domain (§ 305*)—Damages for Unlawful Taking of Land by County Not Excessive.—In action against county for unlawful taking of land for highway without having condemned land, and after having condemned other land not used, $300 verdict for plaintiff held not excessive.

Error to Circuit Court, Nelson County.

Proceedings by L. M. Coleman against Nelson County. Judgment for the former, and the latter brings error. Affirmed.

S. B. Whitehead, of Lovingston, for plaintiff in error.

L. Grafton Tucker, of Lovingston, for defendant in error.

CHESAPEAKE & O. RY. CO. *v.* ARRINGTON.

Nov. 20, 1919.

[101 S. E. 415.]

1. Master and Servant (§ 111 (1)*)—Automatic Couplings on Cars Required by Federal Safety Appliance Act.—The federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.) imposes an absolute and unqualified duty to provide devices which will couple automatically by impact without the necessity of men going between the cars.

2. Master and Servant (§ 240 (5)*)—Duty of Railroad Employee in Coupling Cars.—It is the duty of an interstate railroad employee to refrain from going between cars in making a coupling unless necessity therefor exists.

3. Evidence (§ 473*)—Admissibility of Conclusion under Collective Fact Rule.—In an action by a breakman injured while going between an engine and a car to make a coupling, there was no error in permitting plaintiff to state that there was a necessity for his going between the cars; such testimony being a conclusion drawn from alleged facts, sometimes called the collective fact rule.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 540.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

4. Master and Servant (§ 270 (8)*)—Evidence of Operation of Automatic Coupler.—A brakeman injured while between an engine and a car to make a coupling may introduce evidence as to the percentage of instances in which the coupler on the engine would couple automatically without the necessity of going between the engine and a car, to show the frequent failure of equipment to operate, not as proving necessity at the time in question, but to aid the jury in deciding conflicts in the evidence; the railroad contending that, if the coupler had been given a fair trial, it would have coupled automatically.

5. Master and Servant (§ 269*)—Evidence of Cause of Injury in Coupling Cars.—In an action, under the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), by a brakeman injured while going between an engine and a car to make a coupling, evidence that the engine would frequently go forward very quickly when the brake was released was admissible; plaintiff having testified that, when he went in to open one of the knuckles, the engine lunged forward suddenly so as to catch his hand before he could realize that it was in motion, and defendant's witnesses having testified that the engine slowly drifted.

6. Master and Servant (§ 269*)—Evidence of Cause of Injury in Coupling Cars.—In an action by a brakeman, under the federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.), for injuries when he went between an engine and a car to make a coupling, evidence that sometimes the lever on the engine did not fully open the knuckle, and it had to be pulled open, was admissible to sustain plaintiff's testimony that he went in to open the knuckle, as well as to show the cause of the accident.

7. Master and Servant (§ 269*)—Evidence of Cause of Injury in Coupling Cars.—In an action, under the federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.), for injuries to a brakeman who went between engine and a car to make a coupling, testimony that, when the pin was in a certain position, it was impossible to open the knuckle by the use of the lever on the side of the car, was competent as contradicting defendant's evidence that the lever would open the knuckle even though the pin had not fallen.

8. Evidence (§ 471 (19)*)—Statement of Fact Not Inadmissible as Opinion.—In an action, under the federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.), by a brakeman injured while between an engine and a car to make a coupling, testimony that, when the pin was in a certain indicated position, it was impossible to open the knuckle by the use of the lever on the side of the car, was not inadmissible as opinion evidence, being a statement of fact.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

9. Witnesses (§ 414 (1)*)—Corroborative Evidence.—In an action by a brakeman, under the federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.), injured while between an engine and a car to make a coupling, testimony as to the customary place for a man who gives signals for movement of a train to stand, as to whether he generally stood on the south or north side of the track, was admissible, where the railroad had undertaken to discredit plaintiff's statement as to place at which he stood, and introduced testimony designed to show that there was a deep ditch at that place; such testimony tending to corroborate plaintiff.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 972.]

10. Appeal and Error (§ 1050 (1)*)—Harmless Error in Admission of Evidence.—In an action by a brakeman, injured while between an engine and a car to make a coupling, permitting plaintiff to testify that he did not knowingly keep his hand on the coupler of the engine as it moved towards the car, if erroneous, was without prejudice.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 593.]

11. Master and Servant (§ 111 (1½)*)—Couplers with Side Play Not Defective within Safety Appliance Act.—Side play in coupler, according to a standard and generally accepted use on all railroads, does not constitute a "defect" within the meaning of the federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.).

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Defect.]

12. Master and Servant (§ 111 (1½)*)—Side Play in Coupler Required by Federal Safety Appliance Act.—A requested instruction that side play in a coupler according to a standard in general use on railroads does not constitute a defect within the federal Safety Appliance Act (U. S. Comp. St. 8605 et seq.), unless there is a greater side play than necessary for safe operation, held not erroneous, as making liability for personal injury depending upon the exercise of reasonable care in equipping and maintaining the safety device.

13. Master and Servant (§ 291 (4)*)—Instruction as to Effect of Side Play in Couplers Improperly Refused.—In an action by a brakeman, under the federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.), for injuries received while between the engine and a car to make a coupling, refusal to instruct for defendant that side play in a coupler according to a standard in general and accepted use on railroads did not constitute a defect was error; defendant's evidence showing that there was no defect by reason of the side play, and plaintiff's evidence showing that the side play was excessive.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

14. Trial (§ 253 (7)*)—Instruction Directing Verdict Must Cover All Material Facts.—An instruction, which directs a finding for either the plaintiff or the defendant, must cover all the material facts which the evidence proves or tends to prove, and an instruction, directing a verdict if automatic couplers were of standard make and in good working order, which ignored evidence that couplers were defective because of lateral play on the drawhead, is erroneous.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 737.]

15. Master and Servant (§ 111 (1½)*)—Automatic Coupler Required by Federal Act.—In an action under the federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.), court properly instructed the jury to find for plaintiff if they found that the engine in question was not equipped with a coupler which would couple automatically by impact and which could be coupled to the car without the necessity of going between the ends of the engine and the car to make the coupling, and that the failure to have engine so equipped proximately caused the injury.

16. Master and Servant (§ 111 (1½)*)—Character of Automatic Couplers Required by Safety Appliance Act.—The federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.) is not complied with by merely furnishing couplings which will couple automatically by impact after they have been fixed and made ready to be coupled by employees going between the cars, nor is the mere fact that the company provides couplers proper in their material and construction which are of standard make and are modeled and constructed so as to be capable of coupling by impact sufficient, but the couplers must be so constructed and attached and kept so attached that they will, when properly operated and given a reasonable trial, actually and in fact couple automatically by impact, without the necessity of employees going between the cars.

17. Damages (§ 216 (3)*)—Instruction Not Allowing Double Damages.—An instruction on the measure of damages for personal injuries held not erroneous as allowing the jury to give double damages.

18. Damages (§ 216 (6)*)—Instruction as to Loss of Arm Should Not Refer to Total Disability.—In an action for damages for loss of a hand and forearm, no reference should have been made, in an instruction as to the measure of damages, to injuries which would wholly disable, because the loss of a hand and forearm cannot be said wholly to disable.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 222.]

19. Master and Servant (§ 289 (33)*)—Necessity for Going between Cars to Make Coupling Question for Jury.—In an action, un-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

der the federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.), for injuries to a brakeman, whether it was necessary for him to go between the engine and a car to make a coupling held for the jury.

20. Damages (§ 128*)—Grounds of Objection to Amount of Verdict.—Judges have the power, and are clearly charged with the duty, of setting aside verdicts where the damages are either so excessive or so small as to shock the conscience and to create the impression that the jury has been influenced by bias or prejudice, or has in some way misconceived or misinterpreted the facts or the law which should guide them to a just conclusion.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 202.]

21. Damages (§ 127*)—Excessiveness with Reference to Verdicts in Similar Cases.—Where the amount of a verdict is attacked because it is unusual, it is proper to make comparisons with the verdicts which other juries have found in other cases for similar injuries, as the verdicts of other juries approved by the courts represent the common or average judgment of mankind as to the proper recovery in such cases.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 202.]

22. Damages (§ 127*)—Present Purchasing Power of Money to Be Considered.—In determining whether a verdict for personal injuries is excessive, it is important to determine the present purchasing power of money.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 202.]

23. Damages (§ 132 (12)*)—Loss of Hand and Forearm.—A verdict of $30,000 for the loss of a hand and forearm, allowed a brakeman 42 years of age making $120 a month, and who would have made $150 per month at the time of the trial if uninjured, was excessive.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 206.]

24. Damages (§ 95*)—Measure of Damages for Personal Injuries.—A verdict for personal injuries made upon the theory that plaintiff was entitled to a sum which properly invested would yield him an amount annually equal to his past or expectant wages during his life leaving the principal undiminished for his estate at his death, and without considering the fact that his earning capacity while lessened was not wholly destroyed, was clearly excessive and erroneous.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 206]

25. Damages (§ 95*)—Future Earning Power to Be Considered.—In estimating damages for personal injuries to a man 42 years of age, jury must take into consideration plaintiff's age and that his

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

earnings from manual labor would naturally diminish because of his advancing years long before he lived out his life expectancy.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 189.]

Error to Circuit Court, Bath County.

Action by L. N. Arrington against the Chesapeake & Ohio Railway Company. Judgment for plaintiff, and the defendant brings error. Reversed and remanded.

J. M. Perry, of Staunton, for plaintiff in error.

O. B. Harvey, of Clifton Forge, for defendant in error

RUCKDESCHALL *v.* SEIBEL et al.

Nov. 20, 1919.

[101 S. E. 425.]

1. Usury (§ 38*)—Agreement to Share Profits.—If an investment was made in a particular enterprise or business, entitling the investor to a share of the profits, and the agreement as to the profits was in fact a guaranty of a minimum, but left the investor entitled to a greater profit, if made, so that in effect a partnership was created, and the agreement for profit was not in the nature of an agreement for interest, the transaction would not have been usurious.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 426.]

2. Usury (§ 117*)—Degree of Proof.—Usury must be proved by a clear and satisfactory preponderance of the evidence; proof beyond a reasonable doubt being unnecessary.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 468.]

3. Equity (§ 345*)—Answer to Bill of Discovery as Evidence.—Where answer under oath, responsive to cross-bill charging usury, and exhibited as a bill of discovery, made statements which, if true, disclose a transaction free of usury, the evidence of such answer must be overcome by the testimony of two witnesses, or of one witness and corroborative circumstances, and a different state of facts established, to entitle cross-complainant to relief.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 409.]

4. Usury (§ 117*)—Sufficiency of Evidence to Show Usury.—Evidence held to establish by a clear and satisfactory preponderance of the evidence that true nature of transaction, whereby payee had paid over $9,000 and had taken note for $10,000 payable 30 days after date, was not an actual investment in any particular enterprise or business, but an agreement for a profit in the nature of interest on

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.